Testimony of the Honorable Yvonne Atkinson Gates, Chair

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on behalf of the

National Association of Counties

Subcommittees on Health and the Environment and Oversight and Investigations

Committee on Commerce

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Mr. Chairman, Members of the Subcommittees, thank you for inviting me to discuss the Environmental Protection Agency's (EPA's) proposed revisions to the national ambient air quality standards (NAAQS) for particulate matter and ozone. My name is Yvonne Atkinson Gates, and I am the Chair of the Board of County Commissioners of Clark County, Nevada. I am appearing on behalf of the National Association of Counties (NACo), where I serve as the Chairperson of the Air Quality Subcommittee of the Committee on Energy, Environment and Land Use. NACo represents elected officials in the over-3000 counties in the United States.

Let me start out by making it absolutely clear that both Clark County and NACo support the goals and ideals of the Clean Air Act and believe that the protection of the environment and wise development of natural resources are obligations shared by citizens, private enterprise, and government at all levels. Obviously, the availability of clean air serves the interests of every American. To argue that those groups and local governments which have legitimate reservations about these proposals are somehow against the ideal of clean air, or that they simply "don't care" about asthmatic children, is patently ridiculous. However, standing before you as an elected official who, like you, must be accountable to my voters for the way I spend their money, I do harbor substantial reservations about these proposed revisions.

Establishing a more stringent ozone standard and imposing a new particulate matter standards within the next few months is unwarranted and clearly premature, in our

view. The scientific foundations for these proposed revisions, especially for particulate matter, have an unprecedented level of uncertainty, as evidenced by the lack of consensus among the scientific community. To put it simply, there are more questions than there are answers. Questions regarding the validity of the health effect studies and what particles are of primary concern (e.g., sulfates or dust) remain to be answered. There is even debate within the scientific community regarding whether it is possible to accurately measure particles having a diameter of 2.5 microns or less.

We are deeply concerned also with questions regarding the process which EPA went through in proposing these revisions and the potential costs/burdens which will be imposed on units of local government as a result of them. The two issues are intertwined, as the impact on local governments cannot be ascertained with any degree of certainty since EPA has failed in complying with the process requirements.

In addition, I'd like to spend some time discussing the financial implications to my own county, and counties generally if the proposed standards are promulgated as currently drafted.

Costs/Implications of the Proposed Standards

Clark County, along with other communities across this country, have devoted substantial resources in improving air quality to protect the public health and the environment. We have made significant progress, and in some cases, remarkable progress. For example, the Las Vegas Valley attained national health standards for ozone

in 1986 and we remain in attainment despite an almost two-fold increase in population over the last 10 years. The Clark County Health District administers the most extensive PM_{10} monitoring network in the country, and locally-adopted control strategies for particulate matter are among the most demanding in the country.

Mr. Chairman, members of the Subcommittees, the proposed revisions for ozone and particulate matter, if implemented, will result in costly federal mandates that are essentially unnecessary. Extraordinary costs and burdens will likely cause fall on units of local government and our business community. Again, let me preface this discussion with the thought that much of this cost impact analysis is necessarily speculative, due to EPA's refusal to meet the procedural requirements imposed on it, which would have provided detailed financial information.

What we do know is that many new non-attainment areas will be created and Clark County will likely be among them. Attached to my written testimony, the Subcommittees will find a state-by-state list of the anticipated reclassifications of counties as non-attainment for either ozone or particulate matter.

In terms of dollar costs alone, EPA's own estimates show that the costs of attaining the proposed ozone standard outweigh the benefits. While EPA estimates that ozone compliance costs would be $600 million nationwide, one of the independent studies that have been done - in this case in Ohio - projects that annual capital expenditures for Ohio utilities alone would exceed $730 million per year. Those costs are

estimated to boost utility rates that counties and citizens pay more than 17% in some areas in that state.

Similarly, a study by Sierra Research for the American Petroleum Institute indicated that compliance costs for the Chicago Metropolitan Area alone would be, at a minimum, $2.5 billion per year. The President's own Council of Economic Advisors contradicts EPA's optimistic cost estimates, stating that the actual cost of compliance could be as much as $60 billion.

It is important to note that these costs are all in addition to the costs of complying with **current** Clean Air Act requirements, which are steadily improving the quality of the air we breathe.

Of course, up-front dollar costs are not the sole measure of adverse impacts. Under the current ozone and particulate matter standards, less than 100 counties are classified as non-attainment areas for one or the other of the two pollutants. Under the proposed revisions, that number could leap to almost 800, according to some sources. Again, I refer you to the attached list.

The possible control measures which could be imposed on these counties, along with the stigma which is automatically attached to a designation of non-attainment, can stifle attempts at economic development in these areas. Since the economy of Clark County is almost entirely based upon tourism, EPA's designation of our county as non-attainment will do damage to our ability to market our communities as safe and clean places to live.

Furthermore, in addition to the current designation scheme of attainment/non-attainment, EPA is proposing to introduce a new category, the so-called Area of Influence (AOI). An AOI could conceivably be in full attainment for ozone and particulate matter, and yet be contributing to a condition of non-attainment up to 200 miles away. The control measures which might be imposed upon an AOI have yet to be determined by EPA, but it is not hard to imagine that they might well include the full range of restrictions to which a non-attainment area is subject.

EPA's Flawed Process

In proposing any regulations which are likely to have a significant impact on the regulated community, federal agencies, including EPA, are subject to a host of legislative, administrative, and executive requirements. The collective purpose of these requirements is to ensure that the regulations proposed and ultimately adopted reflect the legitimate concerns of those who will be affected by them, and that less burdensome alternatives are given serious consideration. In proposing the NAAQS revisions for ozone and particulate matter , EPA has largely failed to meet any of these legal requirements.

Unfunded Mandates Reform Act of 1995 (UMRA)

Mr. Chairman, in proposing changes to the Ozone and Particulate Matter air pollution standards, EPA has violated the Unfunded Mandates Reform Act of 1995 (UMRA) [PL104-4]. NACo and elected local government officials worked tirelessly

with the last Congress to secure this important legislation, and we consider it an affront that EPA should disregard this legal requirement.

UMRA, Sections 201 and 202

Taken together, Sections 201 and 202 delineate the procedural steps which agencies must go through in order to assess the effects of regulatory actions on State, local, and tribal governments, and the private sector, when engaging in any rulemaking which might be characterized as a "significant regulatory action" (defined as an action which will require an expenditure of $100,000,000 or more (adjusted for inflation) in one year).

If the significant regulatory action threshold is met, UMRA requires the following in-depth analysis:

1. Qualitative and quantitative assessment of the anticipated costs and benefits of the mandate
2. Analysis of federal financial assistance and other federal resources available to state, local and tribal governments
3. Estimates of future compliance costs
4. Analysis of any disproportionate budgetary effects on any regions, states, localities and tribes
5. Estimates of the effects on the national economy
6. Reports of EPA's prior consultation with elected state, local and tribal officials

7. Summary of submitted comments from the various levels of government
8. EPA's evaluation of those comments

EPA produced a regulatory impact analysis that assessed only the costs, economic impacts and benefits associated with implementation of the revised standards. EPA has failed to produce most of the required in-depth analyses listed above, specifically numbers two through eight, and failed to publish, as part of the proposed rule in the Federal Register, any of the analyses. In the proposed rule EPA states:

> "*Judicial decisions make clear that the economic and technological feasibility of attaining ambient standards are not to be considered in setting them*, although such factors may be considered to a degree in the development of State plans to implement the standards."(emphasis added)
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> [61 Fed. Reg. 241, 65667 (PM), 61 Fed. Reg. 241, 65745 (Ozone)]

We obviously disagree with EPA's views on this point, and believe that the analyses should be done.

UMRA, Section 204

Section 204 requires that "Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory

proposals containing significant Federal intergovernmental mandates." Apparently, EPA believes that it has fulfilled this obligation to date through the creation of the Clean Air Science Federal Advisory Committee. However, we would point out there is not a single elected county official on the Advisory Committee. EPA's continued compliance with this requirement is critical, since it is State, local and tribal officials who must draft, consider and enact enabling legislation to authorize new or amended programs.

UMRA, Section 205

Section 205 requires that, absent some exceptions, "before promulgating any rule [which would qualify as a significant regulatory action], the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule."

EPA claims that it is prohibited by the Clean Air Act from considering the cost of attaining revised national air quality standards. However, UMRA requires federal agencies, including EPA, to assess the economic impact of their regulatory actions on state, local and tribal governments, as well as the private sector. Absent a clear statement by Congress that it intended to exempt Clean Air Act regulations from the coverage of the Unfunded Mandates Reform Act, EPA should not presume that it is prohibited from considering the cost of attaining revised national ambient air quality standards. UMRA,

Title I, Section 4 clearly lists the categories of federal law that are excluded from its coverage. The Clean Air Act is not one of the listed exclusions.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

Mr. Chairman, counties care about, and depend on, economic development. Small business is the lifeblood not only of local economies, but of the national economy as well. The potential impacts of these proposals on small businesses throughout this country - as well as on medium and small-sized local governments - could be devastating. Yet EPA contends that these proposals are not subject to SBREFA and that the Agency s not required to convene a Small Business Advocacy Review Panel as required under Section 244 of that Act.

This refusal to subject itself to the law comes despite the fact that EPA, in its own very limited consideration of the effects on small business, stated in its Regulatory Impact Analysis (RIA) that at least 27, and as many as 78, companies with 100 employees or less), would experience annual compliance costs in excess of 3% of sales. At least 10, and as many as 54, would face costs in excess of 10% of sales. I know of no small businesses in my county which could stay afloat while surrendering such a large portion of their revenues to these compliance costs.

Despite all of this, EPA clings to the specious reasoning that it is not subject to SBREFA because the mere act of setting a standard, in and of itself, imposes no costs on

anyone. We think that this is fallacious and should not be permitted to go unchecked by this Congress.

The Chief Counsel for Advocacy of the U. S. Small Business Administration, informed EPA Administrator Carol Browner in a letter dated November 18, 1996, that it was his official legal opinion that SBREFA applied to these proposals. In that same letter he concluded that "**this regulation is certainly one of the most expensive regulations, if not the most expensive regulation faced by small business in ten or more years."** (emphasis in original)

Executive Orders 12866 and 12875

Executive Orders 12866, "Regulatory Planning and Review" (1993), and 12875, "Enhancing the Intergovernmental Partnership" (1993), both contain language which is complimentary to the ideals which were later codified in UMRA. It is important to note, however, that both Executive Orders contain their own language which, standing alone, impose requirements on EPA with regard to the proposed NAAQS revisions.

E.O. 2866

Executive Order 12866 requires assessment of the aggregate economic impact which regulatory actions will have on state, local and tribal governments. Whenever the estimated regulatory actions require expenditures of $100 million or more, federal agencies must assess the costs and benefits. Future compliance costs must also be

estimated, disproportionate budgetary effects must be analyzed and federal resources must be identified. All of these requirements apparently have been ignored in the development of the revised NAAQS.

E.O. 12875

Executive Order 12875 specifically directs federal agencies to reduce unfunded mandates and increase flexibility for compliance with federal regulations. EPA has ignored this Executive Order in its proposal for the ozone and particulate matter revisions.

Unresolved Problems

Rather than promulgate new air quality standards that are based upon a questionable scientific foundation, and proposed under a seriously-flawed process, we believe that EPA should focus on correcting existing problems associated with existing standards, regulations and policies. With respect to the current NAAQS, EPA needs to exercise more flexibility in terms of how violations of these standards are determined, and equally importantly, how non-attainment boundaries are determined.

Clark County's experience in air quality planning for carbon monoxide is a good example of existing problems that remain unresolved. Within the Las Vegas Valley, there are approximately 12-14 air quality monitoring stations that sample carbon monoxide air pollution throughout the Valley. Within the last few years, only one of

these stations has ever recorded a violation of the 8-hour national standard for carbon monoxide. During last winter, there were no violations of the standard. We have achieved remarkable progress in reducing carbon monoxide emissions and improving air quality with the Valley. In spite of this progress, this summer, EPA will reclassify the Las Vegas Valley from a "moderate" to a "serious" non-attainment area for carbon monoxide. This does not make sense to us.

Conclusion

In conclusion, let me again voice my own and NACo's strong support for the goals and ideals of the Clean Air Act. The Act and its subsequent amendments have improved the quality of the air we breathed by all Americans. We also support the review of the standards every 5 years, as mandated by the Act. We ask only that that review be accomplished in accordance with other legal administrative, legislative and executive requirements, and that the enormous impact on units of local government and our small business tax base be considered and mitigated.

This anticipated action by EPA does not meet the "common sense test. We need a more reasonable and fair-minded approach to air quality planning and regulatory activities from EPA. We need to solve existing problems before creating a whole host of new problems in the implementation of the proposed revisions.

Also attached to my testimony are two Resolutions adopted by the National Association of Counties regarding revisions to the national air quality standards for ozone and particulate matter.

I thank you very much for this chance to appear before you, and I will be happy to answer any questions you may have.